

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CA #: 04CV12058WGY

BETTE J. RIVARD, as Administratrix of)
the Estate of John A Horton,)
Plaintiff)
)
v.)
)
DARTMOUTH HOUSE OF CORRECTION,)
BRISTOL COUNTY, JOHN DOE, RICHARD ROE,)
Bristol County Employees the identity and number)
of who is presently unknown to the Plaintiff)
Defendants)
)
v.)
)
PRISON HEALTH SERVICES, INC. and)
CORRECTIONAL HEALTH CARE SOLUTIONS, INC)
Third Party Defendants)
)

MOTION TO EXTEND SCHEDULING ORDER DATE
FOR ALTERNATIVE DISPUTE RESOLUTION - ADR
(ASSENTED TO)

The defendant, Prison Health Services (hereinafter, "PHS"), hereby moves this Honorable Court to extend the scheduling order date for mediation / Alternative Dispute Resolution ("ADR") for a date in January, 2006. This date will enable mediation to take place after the parties' expert disclosure and after the time for filing dispositive motions has passed. Additionally, this change in date will give the parties and the Court time to address a substantially similar case filed by the same plaintiff in this court, Rivard v. Hodgson, et al., U.S.D.C. No. 05-11932-DPW. All parties, through their respective counsel, have assented to this motion.

As grounds therefore, counsel for PHS states the following:

1. In the instant action, the Plaintiff alleges, *inter alia*, that the County defendants were deliberately indifferent to John Horton's serious medical need which ultimately caused his death (Complaint, ¶1). The County defendants impleaded defendant Prison Health Services ("PHS") for indemnification because, during the time period relative to the complaint, PHS had a contract with Bristol County to provide certain medical care to inmates such as the deceased.¹

2. The original scheduling order in this action set the date for voluntary Alternative Dispute Resolution (ADR) for October, 2005. However, the date for plaintiff's expert disclosure is scheduled for November 1, 2005, defendants' disclosure is due within the time allowed by the local rules after plaintiff's disclosure, and the date for dispositive motions is scheduled for December 1, 2005. Mediation would be more focused and efficient if it is conducted after expert disclosures are complete and after the issue of dispositive motions are resolved.

3. Further, the plaintiff in this action, Bette Rivard, has recently filed a substantially similar case, also in Federal Court. This case, Rivard v. Hodgson, et al., U.S.D.C. No. 05-11932-DPW, ("the 2005 case") (See Attachment A) is also based upon the death of John Horton while he was incarcerated at the Bristol County House of Correction. The only difference between the two cases is that the plaintiff has a direct claim against the medical defendants² in the new 2005 case and has added a negligence claim. In the present action, the medical defendants were brought in by defendant Bristol County only as a third party defendant. Given the substantial

¹ Hereinafter this case will be referred to as the "2004 case."

² The plaintiff has also added Dr. Susan Andrews as a defendant in the 2005 case.

similarities between the two cases, it will be impossible for any meaningful mediation to take place until the parties have time to address the new case.³

WHEREFORE: Prison Health Services Inc. hereby requests that this Honorable Court grant it the following relief:

- a). Continue the date for voluntary alternative dispute resolution to January, 2006;
- b). Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

Prison Health Services, Inc.
By its attorneys:

/s/ Mary Eiro-Bartevyan

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Assented to:
Bette Rivard,

Assented to:
Dartmouth House of Correction, Bristol County,

/s/ Robert Proulx (meb)
Robert Proulx, Esq.

/s/ Regina Ryan (meb)
Regina Ryan, Esq.

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³ PHS is preparing a motion to dismiss the 2005 case, and anticipates that if the Court denies the motion to dismiss, the plaintiff will file a request to consolidate the 2005 case with the 2004 case.

CERTIFICATE OF SERVICE

I, Mary Eiro-Bartevyan, attorney for Prison Health Services, Inc., hereby certify that I have this **26th day of October, 2005**, forwarded a copy of the foregoing **Motion to Extend Scheduling Order Date for Alternative Dispute Resolution – ADR (Assented To)** , by first-class mail, postage prepaid, to the following counsel of record:

Plaintiff's counsel

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/s/ Mary Eiro-Bartevyan

Mary Eiro-Bartevyan